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# In the Supreme Court

OF THE

## United States

OCTOBER TERM, 1989

In the Matter of:

The Complaint of EVERETT A. SISSON, as owner of the motor yacht the ULTORIAN, for exoneration from or limitation of liability,

EVERETT A. SISSON,  
*Petitioner,*

VS.

BURTON R. RUBY, FIREMAN'S FUND INSURANCE COMPANY,  
and PORT AUTHORITY OF MICHIGAN CITY, Claimants,  
*Respondents.*

On Writ of Certiorari to the United States Court of Appeals  
for the Seventh Circuit

**MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF  
AND BRIEF OF HATTERAS YACHTS DIVISION OF  
GENMAR INDUSTRIES, INC. AS AMICUS CURIAE, IN  
SUPPORT OF RESPONDENTS**

JOHN A. FLYNN  
(Counsel Of Record)  
JAMES B. NEBEL  
ANDREW I. PORT  
GRAHAM & JAMES  
One Maritime Plaza  
San Francisco, California 94111  
(415) 954-0200

*Counsel for Hatteras Yachts  
Division of Genmar  
Industries, Inc.,  
as Amicus Curiae*

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No. 88-2041

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**MOTION BY HATTERAS YACHTS DIVISION OF  
GENMAR INDUSTRIES, INC., FOR LEAVE TO FILE  
AMICUS CURIAE BRIEF IN SUPPORT OF  
RESPONDENTS**

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Hatteras Yachts Division of Genmar Industries, Inc. ("Hatteras") respectfully moves this Court for leave to file the accompanying *Amicus Curiae* brief in support of Respondents. Respondents have consented to leave for this purpose but Petitioner has not. Therefore, leave to file must be sought pursuant to Supreme Court Rule 37.4.

## NATURE OF HATTERAS' INTEREST

There are reportedly more than 17 million recreational watercraft owned in the United States.<sup>1</sup> Hatteras is a domestic manufacturer of many of these watercraft, which are operated both within and outside of the waters of the United States. Hatteras is also a party to litigation commenced in the United States District Court for the Northern District of California [limitation petition by American Auto, Inc. ("American Auto") dismissed, and reported at 1989 AMC 1489 (N.D. Cal. 1989), appeal now pending before the United States Court of Appeals for the Ninth Circuit (No. 89-15689)]. In that litigation, Hatteras is adverse to *Amicus* American Auto. American Auto's motion for leave to file an *Amicus Curiae* brief in this case was granted on March 26, 1990.

## RELEVANT MATTERS RAISED BY THIS AMICUS BRIEF WHICH MAY NOT BE ADDRESSED BY THE PARTIES

Hatteras believes that there are important legal questions of admiralty jurisdiction raised by Petitioner Sisson in this case which will affect the status of American Auto's appeal in the Ninth Circuit, and more importantly, directly impact upon the recreational watercraft industry in the United States. If this Court were to rule that admiralty jurisdiction exists to sustain a petition under the Limitation of Liability Act, 46 U.S.C. § 181 et seq., in a case involving a fire aboard a purely non-commercial watercraft, which does not affect maritime commerce and which does not involve the traditional maritime activity of navigation, the effect will undoubtedly be to expand the jurisdiction of the federal courts to encompass routine products liability claims in contexts beyond which currently exist. More importantly, the decision in this case will directly impact upon the interest of the states in providing a forum and, to the appropriate extent, in applying their own laws to regulate conduct within their borders. As such, a fundamental question raised by Sisson's brief is whether there

<sup>1</sup> Department of Transportation, *National Transportation Statistics Annual Report*, at 35 (1989)

exists any ascertainable federal interest which justifies the frustration of the states' legitimate interests.

Finally, in granting Sisson's Petition for Writ of *Certiorari*, this Court questioned whether *Richardson v. Harmon*, 222 U.S. 96 (1911), should be reconsidered. Briefs filed by Sisson as well as its supporting *Amicus* parties, American Auto and Maritime Law Association of the United States, argue that *Richardson* does not have to be reconsidered. Hatteras believes that Respondents will contend that *Richardson* must be overruled. Hatteras, however, believes that it is not necessary to overrule *Richardson v. Harmon*, but that it should be revisited and considered in light of the historical evolution of admiralty jurisdiction evidenced by this Court's decisions in *Executive Jet Aviation v. City of Cleveland*, 409 U.S. 249 (1972) and *Foremost Insurance Company v. Richardson*, 457 U.S. 668 (1982). When considered in that light, Hatteras submits that *Richardson v. Harmon* remains viable precedent, although the scope of its precedential value is narrowed. Hatteras believes that the foregoing points will not otherwise be brought to the attention of the Court.

As a domestic manufacture of recreational yachts, and as a party defendant to similar litigation now pending in the United States Court of Appeals for the Ninth Circuit, Hatteras has a unique and vital interest in the outcome of this case. Hatteras believes that it can materially contribute to a resolution of the important legal questions of jurisdiction under the Limitation of Liability Act and in striking a balance between the necessary role of the federal courts in promoting uniformity of law and the legitimate role of state courts in resolving local controversies. A decision which promotes stability and fosters predictability will materially advance the interests of pleasure yacht manufacturers and owners.

Respectfully submitted,

/s/ JOHN A. FLYNN  
(Counsel Of Record)

JAMES B. NEBEL

ANDREW I. PORT

GRAHAM & JAMES

One Maritime Plaza

San Francisco, California 94111

(415) 954-0200

*Attorneys for Hatteras Yachts*

*Division of Genmar Industries, Inc.,*

*Applicant for Leave to File Brief*

*as Amicus Curiae*

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**BRIEF OF HATTERAS YACHTS DIVISION OF GENMAR INDUSTRIES, INC. AS AMICUS CURIAE, IN SUPPORT OF RESPONDENTS**

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Hatteras Yachts division of Genmar Industries, Inc. ("Hatteras") respectfully submits this brief as *Amicus Curiae* in support of Respondents.

### QUESTIONS PRESENTED

1. Whether a fire on board a non-commercial vessel docked at a recreational marina on navigable waters bears a significant relationship to traditional maritime activity in order to bring it

within the admiralty and maritime jurisdiction of the District Court pursuant to 28 U.S.C. § 1333 and Article III, Section 2, of the Constitution.

2. Whether the Limitation of Liability Act, 46 U.S.C. § 181, et seq., provides a source of admiralty jurisdiction separate and apart from jurisdiction under 28 U.S.C. § 1333.

3. Whether the Court should reconsider the decision in *Richardson v. Harmon*, 222 U.S. 96 (1911).

### NATURE OF HATTERAS' INTEREST

This is stated in the Motion preceding this brief.

### SUMMARY OF ARGUMENT

The Seventh Circuit properly construed *Executive Jet Aviation, Inc. v. City of Cleveland*, 409 U.S. 249 (1972), and *Foremost Insurance Co. v. Richardson*, 457 U.S. 668 (1982), to limit federal admiralty tort jurisdiction in cases involving non-commercial, or recreational, vessels to accidents which affect maritime commerce and involve activities such as navigation, and as to which legal rules requiring uniform application are required. The decision below conforms with the historical and legislative grant of federal admiralty jurisdiction and recognizes the legitimate interests of the states in providing forums to their residents and in regulating local controversies. The decision does not violate the national interest in promoting uniformity of maritime law.

The Limitation of Liability Act, 46 U.S.C. § 181, et seq. is not a jurisdictional statute, but is instead remedial. Mere ownership of a vessel does not confer jurisdiction on a federal court to entertain an action to limit liability. Logic and case precedent mandate that the elements of admiralty jurisdiction must be satisfied to sustain a limitation action in federal court.

*Richardson v. Harmon*, 222 U.S. 96 (1911), must be revisited and clarified in light of subsequent legislation as well as later decisions by this Court. *Amicus* Hatteras submits that *Richardson* should be read to stand for the limited proposition that the 1884 amendment to the Limitation Act extends the shipowner's rem-

edy under the Act to provide for limitation of non-maritime as well as maritime claims. When so viewed, particularly in light of legislative and decisional developments, the case does not extend admiralty's jurisdiction.

The precise legal issues faced by the *Richardson* Court would not arise today, for the claim that was necessarily characterized as non-maritime in that case would now be characterized as maritime by virtue of The Extension of Admiralty Jurisdiction Act, 46 U.S.C. § 740. Moreover, admiralty jurisdiction to support a limitation petition in *Richardson* would exist today when measured by the decisions in *Executive Jet* and *Foremost* because the vessel was commercial and the collision with the bridge impacted upon maritime commerce. Thus, it is not necessary to reconsider the decision, but only to revisit and clarify it as part of the evolution of admiralty jurisdiction.

If, however, this Court concludes that *Richardson* necessarily held that the Limitation Act implicitly confers jurisdiction, then the decision must be reconsidered in light of subsequent developments. The claims in *Richardson* which were characterized as non-maritime are now considered to be maritime, and this Court now requires that a "nexus" as well as "situs" requirement be met to sustain jurisdiction. Under current circumstances, an implicit finding of jurisdiction is no longer necessary and, consistent with principles requiring explicit grants of jurisdiction, the Limitation Act cannot be construed as independently conferring admiralty jurisdiction.

### ARGUMENT

#### A. The Seventh Circuit's Decision Conforms With The Historical Interest Of The Federal Maritime Law In Uniformity On Matters Affecting Maritime Commerce And Preserves To The States Their Legitimate Interest In Resolving Localized Controversies.

The decision of the Seventh Circuit is based upon an interpretation of the decision of this Court in *Foremost Insurance Co. v. Richardson*, 457 U.S. 668 (1982). That case involved a collision between two pleasure boats on navigable waters. The district

court had dismissed the complaint for lack of subject matter jurisdiction in admiralty. The court of appeals reversed. This Court, relying on its decision in *Executive Jet Aviation, Inc. v. City of Cleveland*, 409 U.S. 249 (1972), affirmed, holding that the potential disruptive impact of a collision between boats on navigable waters, when coupled with the traditional concern that admiralty law holds for navigation, compels the conclusion that a collision between two pleasure boats on navigable waters has a significant relationship with maritime commerce. See *Foremost*, 457 U.S. at 675. By way of example, this Court posited a hypothetical situation involving the collision of two pleasure boats at the mouth of the St. Lawrence Seaway. In such an event, there would be a substantial effect on maritime commerce, without regard to whether either boat was actively, or had been previously, engaged in commercial activity. *Id.* Thus, admiralty jurisdiction would be upheld.

As is pointed out by the dissenting opinion in *Foremost*, however, when pleasure rather than commercial vessels are involved, the issue is essentially one of balancing the separate interests of the desire for national uniformity in maritime matters on one hand and the rights of the states to regulate matters within their borders on the other. See 457 U.S. at 677-78. On the facts of *Foremost*, the majority of the Court struck the balance in favor of upholding admiralty jurisdiction. The dissent, of course, would have struck a different balance.

Against that background, the *Sisson* court was faced with a situation involving a fire aboard a pleasure yacht moored at a marina on navigable waters. Interpreting *Foremost*, the Seventh Circuit cast the issue as whether those facts bore a significant relationship to traditional maritime activity so as to give rise to admiralty jurisdiction.<sup>1</sup> Appendix of Petition at 4a-5a. The court addressed the question by reasoning that federal admiralty juris-

<sup>1</sup> The case is reported as *In The Matter Of The Complaint Of Sisson*, 867 F.2d 341 (7th Cir. 1989). The page citations used in this brief refer, however, not to the reported opinion but to the Appendix of the Petition for Writ of Certiorari filed in this Court (hereinafter "Appendix of Petition").

diction should be upheld in all cases directly involving commercial activity as well as in those involving exclusively non-commercial activity in which the wrong (1) has a potentially "disruptive impact" on maritime commerce and (2) involves the "traditional maritime activity" of navigation. Appendix of Petition at 8a. Because the non-commercial yacht in *Sisson* was moored and not in navigation, the Seventh Circuit concluded that the claimant in limitation had not established the requisite "nexus" with traditional maritime activity, and therefore admiralty jurisdiction was lacking. Appendix of Petition at 9a-14a.

In reaching its conclusion, the Seventh Circuit acknowledged that it was attempting to determine the limits of the scope of "traditional maritime activity." *Amicus* Hatteras submits that the Seventh Circuit was correct in its determination. Clearly, a maritime casualty involving navigational error, even with non-commercial watercraft, bears a direct and close relationship to traditional maritime activity.

As the Seventh Circuit noted, however, the delimiting process is not confined to deciding simply what are the traditional aspects of maritime activity. Appendix of Petition at 9a-10a. Instead, the process involves determining which aspects of maritime activity are worthy of federal concern. Appendix of Petition at 10a. As *Foremost* makes clear, a federal interest is served by having a uniform standard of conduct with respect to navigation on navigable waterways. See 457 U.S. at 675. Having uniform rules of the road—applicable to pleasure craft as well as commercial vessels—promotes the smooth flow of maritime commerce. If pleasure boats followed rules of the road that were different from those followed by commercial vessels, the disruption of maritime commerce could be substantial. Thus, the balance is struck in such instances in favor of uniformity. The interests of the states are correspondingly subordinated.

The petitioner in *Sisson* as well as his supporting *Amicus* parties point out that fire at sea is regarded as one of the greatest dangers facing mariners. They then assert that fires at sea also have a significant connection with traditional maritime activity, and thus, a fire aboard a pleasure yacht on navigable waters should fall within the admiralty jurisdiction, despite the absence

of any impact on maritime commerce. As the *Sisson* court pointed out, however, the application of uniform fire safety laws to pleasure craft is not intended to promote the flow of maritime commerce. Appendix of Petition at 10a. Moreover, as Mr. Justice Powell pointed out in his dissenting opinion in *Foremost*, the fact that the federal courts may not have admiralty jurisdiction over certain claims does not mean that federal law will not be applied by state courts where pertinent and controlling. See 457 U.S. at 682. Nor does it mean that this Court will lose the opportunity to ensure that federal law is applied by the state courts in a rational and uniform way. *Id.* What it means, however, is that the issue of what law to apply is a "choice of law" issue and does not mandate federal court jurisdiction.

Thus, in the absence of the need to promote the smooth flow of maritime commerce, the balance ought to be struck in favor of allowing the respective states to regulate matters within their borders, so long as they do so consistent with the federal laws in force. Where pertinent, state courts must apply federal law as well as local uniform rules of conduct. See *Foremost*, 457 U.S. at 682 (Powell, J., dissenting), citing *Testa v. Katt*, 330 U.S. 386 (1947). The fact that state courts in some instances must apply federal law, however, is entirely distinct from the issue of federal subject matter jurisdiction.

*Amicus* Hatteras submits that the Seventh Circuit's two-pronged test strikes the proper balance between the potentially competing interests of national uniformity in maritime matters and federalism. Where commercial activity is involved, admiralty jurisdiction exists. Even where non-commercial vessels are involved, admiralty jurisdiction exists provided the incident has a potentially disruptive effect on maritime commerce and the traditional maritime activity of navigation is involved. In the absence of either situation, the interests of the states in regulating recreational boating activity within their borders predominate.

**B. To Invoke The Protection And Benefits Of The Limitation Of Liability Act, A Shipowner Must Independently Establish Admiralty Jurisdiction; The Act Itself Is Not Jurisdictional.**

Petitioner *Sisson* and his supporting *Amicus* parties contend that the Limitation of Liability Act confers jurisdiction in the district court separate and apart from the concept of traditional admiralty jurisdiction. The Seventh Circuit rejected that contention, noting that the Act is not cast in jurisdictional terms and reasoning that, as a matter of logic and policy, jurisdiction cannot be sustained in a limitation proceeding unless the locality and nexus requirements are satisfied. *Amicus* Hatteras submits that the Seventh Circuit was correct in that conclusion.

Judicial power is derived from constitutional authority and, in the usual case, by enabling legislation. Jurisdiction should not be implied. 3A Sutherland, *Statutory Construction*, § 67.03, at 354 (4th Ed. 1986); See also *United States v. W.H. Mosley Co.*, 730 F.2d 1472, 1475 (Fed. Cir. 1984). Instead, as this Court noted in *Hallstrom v. Tillamook County*, \_\_\_ U.S. \_\_\_, 110 S.Ct. 304, 308 (1989), reh. denied \_\_\_ U.S. \_\_\_, 110 S.Ct. 761 (1990), "the starting point . . . [in determining whether a statute confers jurisdiction] . . . is the language of the statute itself" (citing *Consumer Product Safety Commission v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980)).

No language in the limitation statute itself confers subject matter jurisdiction. On the contrary, 46 U.S.C. § 185 provides, in pertinent part, that a vessel owner "... may petition a district court of the United States of competent jurisdiction for limitation of liability . . ." (emphasis added). These words provide express recognition that the district court in which the petition for limitation is filed must have jurisdiction; otherwise, the referenced language is rendered meaningless and constitutes mere surplusage. Courts, when construing statutes, are obliged to give effect, if possible, to every word Congress used. See *Reiter v. Sonotone Corporation*, 442 U.S. 330, 339 (1979), citing *United States v. Menasche*, 348 U.S. 528, 538-39 (1955). Congress' use of the phrase "of competent jurisdiction" must be construed to require

the independent establishment of admiralty jurisdiction before the Act can be invoked.

In contrast to the language of the Limitation Act, Congress has, in fact, made express grants of subject matter jurisdiction in other maritime statutes. See, e.g., 45 U.S.C. § 56 (Federal Employer's Liability Act) incorporated by reference in the Merchant Marine Act of 1920 (Jones Act), 46 U.S.C. § 688; see also 46 U.S.C. § 951 (Preferred Mortgage Foreclosure Act); and see 46 U.S.C. § 761 (Death on the High Seas Act). Had Congress intended to grant subject matter jurisdiction under the Limitation Act, it could have done so. That it did not must be deemed an expression of its intent to require the establishment of a basis of jurisdiction apart from the Act.

Support for the conclusion that the Limitation Act itself does not confer admiralty jurisdiction upon a district court is also found in the evolution of the Act and the decisions of this Court construing the Act. In *Ex Parte Phenix Insurance Company*, 118 U.S. 610 (1886), this Court construed the original Limitation Act of 1851. In that case, a steamer allegedly emitted sparks that caused a fire and damage to buildings as the vessel passed by on a navigable waterway. The shipowner petitioned for limitation of liability. The Limitation Act, at the time, did not contain the language now found in 46 U.S.C. § 189, limiting the liability of shipowner to "... any or all debts and liabilities ..."<sup>2</sup> In addition, the then existing rule of law, as established by *The Plymouth*, 70 U.S. (3 Wall.) 10 (1866), was that admiralty jurisdiction was lacking unless the wrong was wholly committed on navigable waters; the consummation of the wrong on land was insufficient to establish admiralty jurisdiction. Under the facts presented and the existing law, this Court held that the district court lacked subject matter jurisdiction to consider the shipowner's petition. The Court found nothing

... in any of the decisions of this court on the subject of the limitation of liability, which supports the view that a district

<sup>2</sup> When enacted, what is now § 189 of Title 46 U.S.C. was § 18 of the Shipping Act of 1884. Rather than refer to the Shipping Act citation, this brief will refer to "§ 189" throughout.

court can take jurisdiction in admiralty of a petition for a limitation of liability where it would not have had cognizance in admiralty originally of the cause of action involved. *In Re Phenix*, 118 U.S. at 624.

The facts of *In Re Phenix*, combined with the then existing state of the law, provided this Court with the opportunity to conclude that the Limitation Act provided an independent basis of jurisdiction. It did not do so, however.

Nor did this Court seize the opportunity in subsequent cases to conclude that the Limitation Act is jurisdictional. For example, in *Butler v. Boston & S.S.S. Co.*, 130 U.S. 527 (1889), a shipowner filed a petition to limit various claims, including some relating to personal injuries and deaths. The libellants asserted that the Limitation Act was not applicable to those personal injury and death claims. This Court rejected that assertion and concluded that the law of limited liability of shipowners is

... necessarily co-extensive with that of the general admiralty and maritime jurisdiction, and that by settled law of this country extends wherever public navigation extends ... See 130 U.S. at 557.

It is significant that this Court opted to conclude that the Act was *co-extensive* with admiralty jurisdiction rather than that it established a separate and independent basis for it.

By the time the issue again reached this Court, the Limitation Act had been amended to include what is now 46 U.S.C. § 189, entitling the shipowner to limit his liability to "any and all debts and liabilities." In *Richardson v. Harmon*, this Court held that the owners of a vessel that had allided with a drawbridge were entitled to limit their liability against the claim for damage to the bridge. Had Congress not amended the Limitation Act, the situation would have been identical to that in *In Re Phenix*. This Court concluded, however, that for effect to be given to the phrase "any and all ... liabilities ...", the Limitation Act, as amended, must be deemed applicable to non-maritime claims.

Petitioner Sisson and his supporting *Amicus* parties assert that *Richardson v. Harmon* held that the Limitation Act provides a

separate and independent basis of admiralty jurisdiction. *Amicus* Hatteras submits, however, that such an interpretation is entirely unwarranted and simply reads too much into the case. The *Richardson* Court did not state the issue in jurisdictional terms and did not conclude that the Limitation Act itself provided an independent jurisdictional basis. Instead, this Court devoted its analysis to an interpretation of whether the 1884 amendment to the Act provided a remedy to a shipowner against non-maritime claims. In fact, the only difference between the situations presented in *Phenix* and *Richardson* was that the 1884 amendment to the Limitation Act had taken effect in the period between the two decisions. That amendment merely specified that the shipowner could limit his liability against "any or all debts and liabilities". Nothing in the wording of that amendment could be construed as an express jurisdictional grant. Congress therefore must have intended that it merely extended a remedy to the shipowner, and this Court in *Richardson* so held.

More recently, the Courts of Appeal for the Eighth, Eleventh and, now, Seventh Circuits have each considered the specific issue of whether the Limitation Act provides a separate and independent basis of jurisdiction in admiralty. Each has ruled that the Limitation Act is not jurisdictional; instead, to invoke the Act, there must exist admiralty jurisdiction under 28 U.S.C. § 1333. See *Three Buoys Houseboat Vacation USA, Ltd v. Morts*, 878 F.2d 1096 (8th Cir. 1989) *reh. denied en banc* 1989 U.S. App. LEXIS 15012 (1989), *petition for cert. filed* (1989), *Lewis Charters, Inc. v. Huckins Yacht Corp.*, 871 F.2d 1046 (11th Cir. 1989), and *In The Matter Of Sisson*, 867 F.2d 341 (7th Cir.) *reh. denied* 1989 U.S. App. LEXIS 4041 (1989), *cert. granted* \_\_\_\_ U.S. \_\_\_\_, 110 S. Ct. 863 (1989). Just as courts have consistently ruled that the territorial scope (*situs*) of the Act is limited to navigable waters (*Butler v. Boston & S.S.S. Co.*),<sup>3</sup> the petitioning

<sup>3</sup> See also *In the Matter of Stevens*, 341 F. Supp. 1404 (N.D. Ga. 1965), *MERCURY SABRE*, 227 F. Supp. 135 (D.Or. 1964), *Petition of E. H. Keller*, 149 F. Supp. 513 (D. Minn. 1956), *In Re RIVER QUEEN*, 275 F. Supp. 403 (W.D. Ark. 1967), *aff'd*, 402 F.2d 977 (8th Cir. 1968), *In Re Howser's Petition*, 227 F. Supp. 81 (W.D. N.C. 1964), *In Re Madsen's Petition*, 187 F. Supp. 411 (N.D. N.Y. 1960).

shipowner must now also establish a nexus with traditional maritime activity. In the case of a non-commercial vessel, that "nexus" requires a potential impact on maritime commerce as well as an integral involvement with maritime navigation. If both are demonstrated, national uniform interpretation of maritime law is mandated.<sup>4</sup>

Contrary to the position taken by Petitioner Sisson as well as the supporting *Amicus* parties, there is nothing inconsistent or inequitable in allowing various categories of claimants to pursue statutory maritime causes against a shipowner while denying a shipowner access to the umbrella of protection afforded by the Limitation Act in the event admiralty subject matter jurisdiction is wanting. Thus, an employee who qualifies as a seaman under the Merchant Marine Act of 1920 (Jones Act, 46 U.S.C. § 688) may bring an action in federal court against his employer even though the employer lacks standing to seek limitation since it is not a shipowner. See *Mahramas v. American Export Isbrandtsen Lines, Inc.*, 475 F.2d 165 (2d Cir. 1973). Similarly, the owner of aircraft may be subjected to wrongful death suits under the Death on the High Seas Act (46 U.S.C. § 761), but be denied the right to invoke the Limitation Act for the same reason. See *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618 (1978).

<sup>4</sup> Sisson and *Amicus* American Auto's reliance on cases which interpret the Limitation Act to include purely recreational vessels, is inapposite. The point is not whether the benefits of the Limitation Act extend to purely non-commercial vessels, but rather whether the petitioning shipowner must satisfy admiralty subject matter jurisdiction. Moreover, these cases either expressly or inferentially mandate that the vessel owner must satisfy the *situs* and (now) *nexus* tests for jurisdiction. See e.g. *In the Matter of Guglielmo*, \_\_\_\_ F.2d \_\_\_\_, 1989 U.S. App. LEXIS 2881 (2nd Cir. 1989); *Rautbord v. Ehmann*, 190 F.2d 533 (7th Cir. 1951); *St. Hilaire Moye v. Henderson*, 496 F.2d 973 (8th Cir. 1974), *cert. den.* 419 U.S. 884 (1974); *Richards v. Blake Builders Supply, Inc.*, 528 F.2d 745 (4th Cir. 1975); and *In Re Young*, 872 F.2d 176 (6th Cir. 1989). Similarly, in *Coryell v. Phipps*, 317 U.S. 406 (1943) and *Just v. Chambers*, 312 U.S. 383, *reh. denied* 312 U.S. 713 (1941), this Court assumed without discussion that the Limitation Act would apply to pleasure craft while specifically deciding questions of the nature and scope of "privity and knowledge" under the Act.

An express ruling by this Court that admiralty jurisdiction must be independently established under the Limitation Act by satisfying the situs and nexus tests of *Executive Jet* and *Foremost* will conform with historical precedent as well as with the language of the Limitation Act itself. It will also promote the constitutional balance between the federal and state court systems. The federal trial courts will then be left with the appropriate task of deciding on a case-by-case basis whether specific matters properly fall within the federal admiralty jurisdiction.

**C. *Richardson v. Harmon* Need Not Be Reconsidered, But Should Be Revisited And Clarified.**

At the time *Richardson v. Harmon* was decided, admiralty tort jurisdiction depended solely on a navigable water situs. See *The Plymouth*. It was also well established that bridges and docks were extensions of the land and therefore presumptively beyond the territorial reach of admiralty. In *Richardson*, a commercial vessel struck a bridge and the shipowner invoked the Limitation Act. Although the bridge operator's claim against the vessel could not, itself, have established admiralty jurisdiction, the shipowner claimed the right to limit its liability against the bridge. In making that claim, the shipowner cited the 1884 amendment to the Act (now 46 U.S.C. § 189), which provides that the right to limitation shall extend to "any and all debts and liabilities". The shipowner argued that "any and all" debts and liabilities meant just that and, to give effect to the amendment, the Act must be deemed applicable to non-maritime as well as maritime torts. This Court agreed and upheld the right to seek limitation.

Petitioner Sisson and his supporting *Amicus* parties argue that the Seventh Circuit's decision is inconsistent with *Richardson* in applying the locality and nexus requirements to a limitation proceeding under the Act. In granting Sisson's Petition for *Certiorari*, this Court asked the parties to brief the issue of whether *Richardson* should now be reconsidered.

*Amicus* Hatteras submits that, if the *Richardson* decision is properly construed, it is unnecessary to reconsider and overrule it at this time. In fact, when *Richardson* is considered as part of the evolution of admiralty jurisdiction from situs alone to the addi-

tional requirement of a maritime nexus, the decision can be harmonized with the subsequent legislative expansion of admiralty jurisdiction (Extension of Admiralty Jurisdiction Act, 46 U.S.C. § 740) and later decisions of this Court. When so considered and clarified, *Richardson* maintains its narrowed precedential value.

At the time *Richardson* was decided, the "maritime locality" or "situs" requirement for admiralty jurisdiction meant that the wrongful act must have occurred and been consummated on navigable waters. See *In Re Phenix*. The *Richardson* Court was faced, however, with an amendment that seemingly extended the Act to allow limitation as to "any and all" debts and liabilities. Faced with the specific issue of the applicability of the amendment to the Act—rather than one of admiralty jurisdiction—this Court held that the amendment must be construed to allow limitation as to non-maritime as well as maritime torts.

The "situs" requirement was modified by the Extension of Admiralty Jurisdiction Act (46 U.S.C. § 740), however. In addition, this Court added the "nexus" requirement to sustain admiralty jurisdiction. See *Executive Jet*. If *Richardson* were to arise today, and this Court were squarely faced with the issue of jurisdiction, admiralty jurisdiction would unquestionably be established under *Executive Jet* and *Foremost*. The vessel in that case was commercial and the allision with the bridge, occurring on navigable waters, not only involved the traditional maritime activity of navigation, but impacted upon maritime commerce. The Seventh Circuit's decision below is consistent with this result.

The essential thread which harmonizes *Richardson*, *Sisson*, *Foremost*, and the Limitation Act is that once admiralty jurisdiction is shown to exist under the teachings of *Executive Jet* and *Foremost* (as more particularly defined by the Seventh Circuit in *Sisson*), the shipowner is able to invoke the provisions of the Limitation Act, including § 189, as well as the Supplemental Rules for Certain Admiralty and Maritime Claims (Rule F, principally), which allow for a "concursus" of claims to be filed in the federal court and a stay of all pending actions against the shipowner arising out of the occurrence giving rise to limitation. The injunctive order (Rule F(3)) and the monition notice

requiring claimants to file their claims and answers in the Limitation proceeding (Rule F(4) and (5)) apply pursuant to 46 U.S.C. § 189 (and *Richardson*), to *maritime* and *non-maritime* claims. This marshalling of claims, or "concurus", and the injunctive relief against other proceedings, is essential to the substantive rights of limitation under the Act. See *British Transport Commission v. United States*, 354 U.S. 129 (1957); see also *Jung Hyun Sook v. Great Pacific Shipping Co.*, 632 F.2d 100 (9th Cir. 1980). To obtain such remedial relief, however, a shipowner must affirmatively establish admiralty jurisdiction under the Act.

In summary, a decision by this Court which clearly establishes that a shipowner seeking the benefits of the Limitation Act must satisfy the situs and nexus tests of *Executive Jet*—and in the case of non-commercial vessels, the nexus standard of the Seventh Circuit in *Sisson*—will not require reconsideration of *Richardson v. Harmon*, but mere revisitation for purposes of explaining the evolution of admiralty jurisdiction. Viewed in that light, *Richardson* maintains its precedential value relating to the proposition that, once admiralty jurisdiction is established, the shipowner can limit liability as to all claims relating to the occurrence, both maritime and non-maritime in nature.

If, however, this Court concludes that *Richardson* inferentially held that the Limitation Act itself implicitly confers admiralty jurisdiction in a district court, then the decision ought to be reconsidered in light of the Extension of Admiralty Jurisdiction Act (which deems "maritime" those tort claims that were previously considered "non-maritime") as well as the decisions of this Court in *Executive Jet* and *Foremost*. The *Richardson* Court was forced to make a difficult decision: it either had to adhere to its decision in *In Re Phenix* and decline jurisdiction or give effect to the language of the amendment (now 46 U.S.C. § 189) and conclude that the shipowner could also limit its liability as to non-maritime claims. That dilemma would not be presented today, however, and this Court would therefore be free to consider directly the question of whether the Limitation Act provides an independent basis of liability.

## CONCLUSION

Hatteras respectfully urges the Court to affirm the decision of the Court of Appeals on the grounds that it is consistent with this Court's decision in *Foremost* involving the scope of admiralty jurisdiction of a non-commercial recreational vessel seeking the benefits of the Limitation of Liability Act, and with the proper balancing of the respective interests of the states and federal judiciary.

Respectfully submitted,

/s/ JOHN A. FLYNN

JOHN A. FLYNN  
(Counsel Of Record)

JAMES B. NEBEL

ANDREW I. PORT

GRAHAM & JAMES

One Maritime Plaza

San Francisco, California 94111

(415) 954-0200

*Attorneys for Hatteras Yachts*

*Division of Genmar Industries, Inc.,*

*Applicant for Leave to File Brief*

*as Amicus Curiae*